

HOUSE BILL NO. 721

INTRODUCED BY M. REGIER, B. USHER, S. VINTON, R. KNUDSEN, L. DEMING

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE DISMEMBERMENT ABORTION PROHIBITION ACT; PROVIDING DEFINITIONS; PROHIBITING DISMEMBERMENT ABORTION PROCEDURES; REQUIRING REPORTS; PROVIDING PENALTIES AND PROFESSIONAL SANCTIONS; AND PROVIDING EFFECTIVE DATES."

WHEREAS, at 12 weeks' gestation, an unborn human being can open and close fingers, starts to make sucking motions, senses stimulation from the world outside the womb, and can likely experience pain, and, as the Supreme Court in Gonzales v. Carhart, 550 U.S. 124 (2007), recognized, the unborn human being has taken on "the human form" in all relevant aspects; and

WHEREAS, many abortion procedures performed after 12 weeks' gestation are dismemberment abortion procedures, which involve "tearing apart and extracting piece-by-piece from the uterus what was until then a living child . . . [and which are] usually done during the 15 to 18 week stage of development, at which time the unborn child's heart is already beating", West Alabama Women's Ctr. v. Williamson, 900 F.3d 1310 (11th Cir. 2018); and

WHEREAS, the dismemberment abortion procedure involves the use of clamps, grasping forceps, tongs, scissors, and similar instruments that through the convergence of two rigid levers slide, crush, or grasp a portion of an unborn human being's body in order to cut it, rip it off, or crush it; and

WHEREAS, the Legislature find that the intentional commission of such acts for nontherapeutic or elective reasons is a barbaric practice, is dangerous for the pregnant woman, and is demeaning to the medical profession; and

WHEREAS, a law regulating abortion, like other health and welfare laws, is entitled to a strong presumption of validity, and it must be sustained if there is a rational basis on which the Legislature could have thought that it would serve legitimate state interests; and

WHEREAS, Montana's legitimate interest in regulating abortion generally and the performance of the dismemberment abortion procedure specifically includes "respect for and preservation of prenatal life at all

1 stages of development; the protection of maternal health and safety; the elimination of particularly gruesome or
 2 barbaric medical procedures; the preservation of the integrity of the medical profession; the mitigation of fetal
 3 pain; and the prevention of discrimination on the basis of race, sex, or disability", *Dobbs v. Jackson Women's*
 4 *Health Org.*, 142 S. Ct. 2228 (2022); and

5 WHEREAS, an article published in *Obstetrics and Gynecology* in 2004 reported that abortion carries
 6 significant physical and psychological risks to the pregnant woman that increase with gestational age, and, in
 7 abortions performed after 8 weeks' gestation, the relative physical and psychological risks escalate
 8 exponentially as gestational age increases; and

9 WHEREAS, as the second trimester progresses, in the vast majority of uncomplicated pregnancies, the
 10 maternal health risks of undergoing an abortion are greater than the risks of carrying a pregnancy to term; and

11 WHEREAS, dismemberment abortion procedures carry inherent risks of infection, bleeding, damage to
 12 other genitourinary and gastrointestinal organs, incomplete emptying of the uterus, cervical laceration, and
 13 uterine perforation; and

14 WHEREAS, the Charlotte Lozier Institute reports that dismemberment abortion procedures and other
 15 abortion procedures performed after the first trimester account for "a disproportionate amount of abortion-
 16 related morbidity and mortality".

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18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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20 NEW SECTION. Section 1. Short title. [Sections 1 through 7] may be cited as the "Dismemberment
 21 Abortion Prohibition Act".

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23 NEW SECTION. Section 2. Definitions. As used in [sections 1 through 7], the following definitions
 24 apply:

25 (1) (a) "Abortion" means the use or prescription of any instrument, medicine, drug, or other
 26 substance or device to intentionally terminate the pregnancy of a woman known to be pregnant, with an
 27 intention other than to increase the probability of a live birth, to preserve the life or health of the child after live
 28 birth, or to remove a dead unborn human being.

1 (b) The term does not include:

2 (i) an act to remove an ectopic pregnancy; or

3 (ii) a separation procedure performed because of a medical emergency and prior to the ability of
4 the unborn child to survive outside of the womb with or without artificial support.

5 (2) "Attempt to perform or induce an abortion" means to do or omit anything that, under the
6 circumstances as a person believes them to be, is an act or omission that constitutes a substantial step in a
7 course of conduct planned to culminate in the performance or induction of an abortion in violation of [sections 1
8 through 7].

9 (3) "Department" means the department of public health and human services provided for in 2-15-
10 2201.

11 (4) "Dismemberment abortion" or "dismemberment abortion procedure" means a procedure that
12 involves:

13 (a) the use or prescription of any instrument, medicine, drug, or other substance or device to
14 intentionally terminate the clinically diagnosable pregnancy of a woman with knowledge that the termination by
15 those means will, with reasonable likelihood, cause the death of the unborn human being; and

16 (b) dilation of the cervix, insertion of grasping instruments, and removal of disarticulated fetal parts
17 from a living unborn human being.

18 (5) "Gestational age" or "probable gestation age" means the age of an unborn human being as
19 calculated from the first day of the last menstrual period of the pregnant woman.

20 (6) "Human being" means an individual member of the species *Homo sapiens*, from and after the
21 point of conception.

22 (7) "Knowingly" has the meaning provided in 45-2-101.

23 (8) "Major bodily function" includes but is not limited to functions of the immune system, normal cell
24 growth, and digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive
25 functions.

26 (9) (a) "Medical emergency" means a condition that, on the basis of a physician's good faith
27 clinical judgment, makes a separation procedure performed prior to the ability of the unborn human being to
28 survive outside of the womb with or without artificial support necessary to preserve the life of a pregnant woman

1 whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering
2 physical condition arising from the pregnancy itself, or when the continuation of the pregnancy will create a
3 serious risk of substantial and irreversible impairment of a major bodily function.

4 (b) The term does not include mental or psychological conditions.

5 (10) "Physician" means a person licensed to practice medicine in Montana.

6 (11) "Physician assistant" means a person licensed under Title 37, chapter 20.

7 (12) "Pregnant" means the human female reproductive condition of having a living unborn human
8 being within the female's body throughout the entire embryonic and fetal stages of the unborn human being
9 from fertilization to full gestation and childbirth.

10 (13) "Purposely" has the meaning provided in 45-2-101.

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12 **NEW SECTION. Section 3. Dismemberment abortion procedures prohibited -- penalty.** (1)

13 Except in a medical emergency, a person may not purposely or knowingly perform, induce, or attempt to
14 perform or induce a dismemberment abortion procedure.

15 (2) A person who violates this section is guilty of a felony and on conviction shall be punished by a
16 fine in an amount not to exceed \$50,000, imprisonment for a term of not less than 5 years and not more than 10
17 years, or both.

18 (3) A woman on whom an abortion is performed, induced, or attempted in violation of [sections 1
19 through 7] may not be prosecuted for conspiracy to commit a violation of [sections 1 through 7].

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21 **NEW SECTION. Section 4. Reporting -- forms.** (1) If a physician or physician assistant performs a
22 dismemberment abortion procedure because of a medical emergency, the physician or the physician assistant
23 shall, within 15 days, file with the department on a form supplied by the department a report containing the
24 following information:

25 (a) the date the procedure was performed;

26 (b) the probable gestational age of the unborn human being and the method used to calculate
27 gestational age;

28 (c) a statement declaring that the procedure was necessary because of a medical emergency;

1 (d) the specific medical indications supporting the determination that a medical emergency existed;
2 and

3 (e) the physician's or the physician assistant's attestation under oath that the information stated on
4 the form is true and correct to the best of the person's knowledge.

5 (2) Reports required by and submitted pursuant to this section may not contain the name of the
6 pregnant woman on whom the dismemberment abortion procedure was performed or any other information or
7 identifiers that would make it possible to identify, in any manner or under any circumstances, the woman who
8 underwent the procedure.

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10 **NEW SECTION. Section 5. Professional sanctions -- civil fines -- enforcement.** (1) A physician or
11 physician assistant who purposely or knowingly violates [section 3] commits unprofessional conduct, and the
12 person's license to practice medicine in Montana must be suspended for a minimum of 1 year pursuant to Title
13 37.

14 (2) A physician or physician assistant who purposely or knowingly delivers to the department a
15 report required under [section 4] that is known by the person to contain false information shall be subject to a
16 fine of \$2,000 imposed by the department.

17 (3) A physician or physician assistant who purposely or knowingly fails to file with the department a
18 report required under [section 4] shall be subject to a fine of \$1,000 imposed by the department.

19 (4) The attorney general may enforce the provisions of [sections 1 through 7] on behalf of the
20 department. The department also has the authority to bring an action.

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22 **NEW SECTION. Section 6. Construction.** (1) [Sections 1 through 7] may not be construed to:

23 (a) create or recognize a right to abortion or a right to government funding of abortion;

24 (b) alter generally accepted medical standards; or

25 (c) make lawful an abortion that is otherwise unlawful.

26 (2) The right of individual privacy as referenced in the Montana constitution, the Montana Code
27 Annotated, or the Administrative Rules of Montana does not create, and may not be construed as creating or
28 recognizing, a right to abortion or to governmental funding of abortion.

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NEW SECTION. Section 7. Right of intervention. The legislature may, by joint resolution, appoint one or more of its members to intervene as a matter of right in any case in which the constitutionality or enforceability of [sections 1 through 7] is challenged.

NEW SECTION. Section 8. Direction to department. The department of public health and human services is directed to create the form required by [section 4] within 30 days after [the effective date of this act].

NEW SECTION. Section 9. Codification instruction. [Sections 1 through 7] are intended to be codified as a new part in Title 50, chapter 20, and the provisions of Title 50, chapter 20, apply to [sections 1 through 7].

NEW SECTION. Section 10. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 11. Effective dates. (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Section 4] and [section 5(2) and (3)] are effective on the later of:

(a) passage and approval; or

(b) the date the department of public health and human services certifies in writing to the code commissioner that the form required under [section 4] has been created.

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